

Chapter Two Study on Dispute Resolution Process in Specific Cases Part I: The Consumer's Alternative: Dispute Resolution Process in Consumer Protection

著者	Aguiling-Pangalangan Elizabeth
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Chapter Two

Study on Dispute Resolution Process in Specific Cases

Part I: The Consumer's Alternative: Dispute Resolution Process in Consumer Protection

Elizabeth Aguilin-Pangalnagan

I. Introduction

Individual consumers have faced an increasingly formidable challenge since they began transacting with institutional sellers for purchase of products or provision of services. Aggressive marketing by companies has made it difficult for consumers to adequately judge the products' quality. Quite apart from questions of judgment, style and taste, expert knowledge has become a tool essential to discern the technical aspects of many modern products, a skill that ordinary consumers may not possess. To overcome this predicament, consumer protection laws have been enacted to aid the buyer grapple with the overweening advantage enjoyed by the seller. In the Philippines, while legislation has been extensive, the administrative infrastructures for their implementation and enforcement have remained rudimentary.

Administrative adjudication in the Philippines is adversarial in nature. The litigants prove their conflicting claims before the judge who, after clarifying the issues and receiving evidence, renders a decision in favor of one of the disputing parties. Even if the case is settled before the conclusion of the trial, finding redress for grievances and equitable remedies for the aggrieved party remain the predominant objectives for filing a case. Reliance on the adversarial process is based on the premise that the rightness and "wrongness" or truth or falsity of the claims will be eventually established. In the end, the court or tribunal will arrive at a just and functionally sound decision. It is anchored on the belief that in any dispute the truth will surface through the adversarial process and justice will be served. The reality, however, is that litigation does not always lead to a fair result. Furthermore, it unduly demands much of one's time and money as delay ensues and cases are prolonged by appeals procedures. Granting *arguendo* that the process does work and the truth

emerges, there is a high price to pay since the adversarial system precludes future cooperation, let alone a robust business relationship.

Alternative Dispute Resolution (ADR) then, is an option thoughtfully being considered by the government to blunt this litigious edge and encourage more openness and communication between the disputing parties. This leads to earlier settlement in appropriate cases with a saving in managerial and legal time, expense and anxiety. ADR methods are varied, but in the end, they all strive to view the problem from the perspective of interests rather than rights.

The Department of Trade and Industry through the Bureau of Trade Regulation and Consumer Protection, the Department of Health through the Bureau of Food and Drugs and the Department of Agriculture chiefly employ the adversarial method even in its mediation and arbitration proceedings. In the Philippines, the concept of ADR in Consumer Protection is still undergoing careful scrutiny and serious consideration. The principal intention is to duplicate the conciliation process in our Barangay System. To date, the Department of Trade and Industry is conducting a research on the operation and effectiveness of this mode of dispute settlement and have yet to make a detailed proposal to implement it. Nonetheless, a close perusal of the practices employed by the seller-buyer in settling their disputes vividly evinces ADR in action.

At length, this paper aims to discuss the concept of ADR, its applicability in consumer transactions and its operation in the Philippines. It seeks to explore an alternative to litigation to resolve the dilemma of the burdened Filipino consumer.

II. Consumer Protection

1. Consumer Transactions

A consumer is defined in R.A. 7394 (1991), as “a natural person who is a purchaser, lessee, recipient or prospective purchaser, lesser or recipient of consumer products, services or credit. “ He/she enters into consumer transactions either through (1) (i) a sale, lease, assignment, award by chance, or other disposition of consumer products or (ii) the grant of provision of credit to a consumer for purposes of credit to a consumer for purposes that are primarily personal, family, household or agricultural;

or (2) a solicitation or promotion by a supplier with respect to transactions described in clause (1).

When consumers have cause to complain about a product or service there is no guarantee that they will obtain satisfaction. On one hand, many businesses adopt a positive attitude to consumer grievances, particularly with the increasing number of consumer groups. Some large businesses have created customer relations departments to supervise the handling of grievances and incorporate a consumer orientation into company decisions. However, other commercial establishments are less responsive as a matter of policy, engendered by a myopic view that once they have the buyers' money, they would not part with it or care whether the consumer is happy about the purchase. Others do it out of sheer inefficiency.

There is an obvious imbalance of power when consumers challenge a company with a complaint, even in cases where the company is favorably disposed to accommodating its patrons. Typically, purchasers have a weak bargaining position because of the gross disparity between the buyer and the seller as regards knowledge of the product and the availability of resources, both legal and financial. This constricts the consumer's access to expeditious and equitable remedies (Ross Cranton, CONSUMERS AND THE LAW, 1984, p.3). Legal remedies are likewise available, but on the whole, many consumers are still ignorant of their legal rights or are unwilling or unable to assert them. Inflationary prices, food shortages, unsafe products -- all clearly demonstrate that despite people's steadily mounting concern with consumer protection, the battle is far from won.

The comprehensive consumer laws enacted provide consumers with tremendous power, much of which remain untapped. Consequently, buyers are harassed and encumbered by the invariably rising prices of basic commodities on one hand and their increasing exposure to inferior merchandise, deceptive advertising and fraudulent marketing practices, on the other (Ross Cranton, CONSUMERS AND THE LAW, 1984, p.3).

2. Settling Consumer Disputes

Law is a method of resolving disputes. It is a set of rules that are frequently changing. Since ideas of what is fair change, so do the rules. At one time, if a customer bought some pots and pans from a door-to-door salesman on Monday night and realized the following day that she had entered into a bad bargain, there was no

way that she could cancel that sale. Since, a contract of sale had already been perfected, parties were left in the position they found themselves. More recently, consumers have questioned the fairness of this practice because many felt that they had been cheated by salesmen who exaggerated the features of their products. Laws were then amended to allow customers to cancel sales within a limited period.

This was also accompanied by a growing realization that product safety -- or more precisely, the prevention of product liability -- originates not with the company's legal department, but with the personnel involved in product design, engineering, quality control, production, packaging, labeling, and distribution of the product.

This change of attitude in this era of consumerism has now crystallized in various Consumer Protection Laws. Particular departments of the Government have been vested with basic authority over mandatory safety standards and consumer education and the power to sanction and impose civil or criminal penalties for safety violations (Editorial Staff of The Bureau of National Affairs Inc., THE CONSUMER PRODUCT SAFETY ACT: TEXT, ANALYSIS, LEGISLATIVE HISTORY, 1973). Government controls are the best protection for consumers and other techniques like the free operation of market forces, business self-regulation and private law only come into play at a much later stage. It is unrealistic to expect businesses to introduce measures antagonistic to their interests. Hence, It is not surprising that self-regulation has only been practiced against the background of threatened legal action should there be failure to meet the established standards.

Despite this, consumer protection is still seen largely as a collection of individual problems which particular consumers must attempt to solve by taking definite but independent action. Consumers who receive a faulty product or sub-standard service, for example -- the most common consumer complaints -- must seek redress on their own, and if a business establishment should refuse a reasonable settlement, consumers are expected to enforce their private law remedies by taking court action. But in such instance, many consumers fail to complain, and those who do are ignored and stonewalled. Only the most resolute customers will stick it out until a settlement is reached. Even in this instance, such protracted negotiated settlement could yield less than the amount shelled out by the consumer when she purchased the product years ago. The problem is especially acute with poorer consumers, who may have an overwhelming sense of helplessness.

III. The Philippine Context

1. Law and Jurisprudence

Article II of the 1987 Constitution acknowledges the power of the Filipino people, maintaining that sovereignty resides in the people and all government authority emanates from them. It mandates the State “to promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of life and an improved quality of life for all” (CONST., Art II, Sec 9). It likewise “recognizes the vital role of communication and information in nation-building” (CONST., Art II, Sec 24). And in all these designs, “the State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation” (CONST., Art. XI, Sec. 23).

In the domain of consumer rights, it was explicitly provided in Art XVI Sec. 9 of the 1987 Constitution that “the State shall protect the consumers from trade malpractices and from substandard or hazardous products.” In sec. 11(2), it was further stated “the advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of general welfare.” It was clearly within this ambit that several consumer protection laws were legislated by Congress.

Republic Act No. 7394 is the most recent enactment on consumer protection. Aptly termed *The Consumer Act of the Philippines*, it was decreed to protect the interests of the consumer, promote his general welfare and establish standards of conduct for business and industry. As such, its specific objectives focus on protection against hazards to health and safety and against deceptive, unfair and unconscionable sales acts and practices; on the necessity of information and education and of adequate rights and means of redress; and on the involvement of consumer representatives. The law is divided into several titles that clearly and specifically cater to the needs of the consumers. Title II centers on Consumer Product Quality and Safety, Title III focuses on Protection Against Deceptive, Unfair and Unconscionable Sales Acts or Practices, and Title V more importantly creates the National Consumer Affairs Council. The Council is charged with the power to monitor and evaluate implementation of consumer programs and ensure that concerned agencies take appropriate steps to

comply with the established standards and priorities. Every Department, which is part of the Council, should appoint arbitration officers who will have original and exclusive jurisdiction to mediate, conciliate, hear and adjudicate all consumer complaints.

Under Philippine law, an arbitration agreement is valid, enforceable and irrevocable like any other contract. It applies to both domestic and international arbitration and the rules apply equally to both of them. An award by a majority of arbitrators is valid unless the concurrence of all of them is required by the terms of the arbitration agreement. The arbitration award must be in writing and signed and acknowledged by a majority of the arbitrators, if more than one and by the sole arbitrator if there is only one. But based on admissible grounds affirmatively shown as enumerated in the law, the court can vacate the award upon petition of any party to the dispute. The court may then at its discretion, direct a new hearing either before the same arbitrators or before a new set of arbitrators. At any time within one month after the award is made, any party to the dispute may apply to the court having jurisdiction, for an order confirming the award. The court must grant such order, unless the award is vacated, modified or corrected. Notice will then be served to the adverse party to comply with the arbitrator's decision.

Jurisprudence, though, shows a very thin body of cases specifically dealing with consumer protection. Most probably because the cases are lodged and litigated in the different departments of the government acting as quasi-judicial agencies, and appealed to the Office of the Secretary then to the Office of the President. It reaches the Court of Appeals or the Supreme Court only through certiorari proceedings, claiming grave abuse of discretion in the decision rendered by the administrative body. Ironically, the first issue often raised in court is whether or not the arbitration clause provided in the contract should be recognized by the parties and the courts. Initially, the Philippines refused to give validity to arbitration because it ousted the courts of their jurisdiction to decide disputes. In the case of *Compagnie de Commerce v. Hamburg Amerika* (36 Phil 590 (1917)), the Philippine Supreme Court disregarded the provision in a charter party contract for the settlement of disputes by reference to arbitration in London. The court also cited the previous cases of *Wahl v. Donaldson, Sims & Co* (2 Phil 301 [1903]) and *Cordoba v. Conde* (2 Phil 445 [1903]) where it held that a contractual stipulation for general arbitration cannot be invoked to oust our courts of jurisdiction.

This policy changed with the enactment of the Civil Code of the Philippines in 1950. The Civil Code in Arts. 2028-2048 treats arbitration agreements as a special contract akin to compromise, which is defined as “a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced” (Victor P. Lazatin, *Dispute Resolution in the Philippines*, 16). This policy was amplified by Republic Act 876 (Arbitration Law) made in reference with the Civil Code of the Philippines, Presidential Decree No. 1746 and Executive Order 1008. This law applies to all normal commercial disputes but not to labor disputes that are governed by a different set of rules. Nor may parties arbitrate questions, which, by reason of public policy, cannot be the subject of compromise. The rules for arbitration are found in the law itself, but the scope of procedural rules is derived from the contractual relationship of the parties. Courts may intervene during the arbitration, but the extent of its relief is not defined.

One of the recent cases of significance is *Puromines, Inc v. Court of Appeals*. (220 SCRA 281 (1993) In this case, Puromines entered into a contract with Philip Brothers Oceanic, Inc. for the sale of prilled urea in bulk. The contract provided that disputes arising therefrom should be submitted to arbitration in London. The shipment arrived in Manila in bad order, caked, lumpy and contaminated with rust. Puromines filed a suit for breach of contract. Philip Brothers filed a motion to dismiss asserting application of the arbitration clause. In unequivocal terms, the court pronounced, “arbitration has been held to be valid and constitutional.” It went on to say that “unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable arrangements and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator.”

1.1 Barangay System

In the Philippines, the government structured the barangays and the other sectors of the community so that they may serve the Criminal Justice System more comprehensively and effectively. Secs. 399-422 of the Local Government Code of 1991 (R.A. 7160) is a recognized example of ADR, which the DTI is employing as a model to pattern its dispute resolutions in consumer transactions. In this scenario, there is a *lupong tagapamayapa* in each barangay, which serves, among other things, as an organ for alternative dispute resolution. The members are appointed by the

Punong Barangay from among persons residing or working in the barangay, possessing integrity, impartiality, independence of mind, sense of fairness, and reputation of probity, and not otherwise disqualified by law. In all katarungang pambarangay proceedings, the parties must appear in person without the assistance of counsel or representative, except for minors or incompetents.

Unless accepted from the process by law, no dispute involving individuals actually residing in the same city or municipality may be brought to court without first going through the conciliation procedure under the lupon tagapamayapa. It is a condition precedent imposed by Sec. 412. The mediation process as aptly described in Sec. 410, proceeds with a complaint with the Lupon Chairman who immediately calls the parties and their witnesses to a meeting for mediation of their conflicting interests. If he fails to bring about an amicable settlement within 15 days from first meeting, he shall forthwith constitute a conciliation panel known as pangkat ng tagapagkasundo, consisting of three members chosen by the parties from the list of members of the lupon. The pangkat shall hear both parties and their witnesses, simplify issues and explore all possibilities of amicable settlement. The pangkat shall arrive at a settlement or resolution of the dispute within 15 days from the day it convenes, extendible for another period not exceeding 15 days except in clearly meritorious cases. The amicable settlement shall be in writing, in a language or dialect known to the parties, signed by them, and attested to by the lupon chairman or the pangkat chairman as the case may be.

At any stage of the proceedings, the parties may agree in writing to submit their dispute to arbitration and abide by the award of the lupon chairman or the pangkat. Such agreement to arbitrate may be repudiated within five (5) days. The arbitration award, nonetheless, shall be made after the lapse of the period for repudiation and within ten (10) days thereafter.

The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof, unless repudiated or nullified. It may be enforced by execution by the lupon within six (6) months from the date of settlement. If the pangkat fails to achieve an amicable settlement within 15 days from the day that it convenes, the lupon or pangkat secretary (attested by the lupon or pangkat chairman) issues a certificate that no conciliation or settlement has been reached. Then, and only then, may the parties go to court.

Although not explicit in the law, consumer complaints filed by a resident of the barangay against a seller who is likewise a resident in the same place does not go through this process. This is deduced from the coverage of the Consumer Act of the Philippines, which governs all consumer disputes.

1.2 Disposition of Consumer Cases

Consumer Cases mediated or arbitrated or adjudicated by the Department of Trade and Industry through the Bureau of Trade Regulations and Consumer Protection (BTRCP), are explicitly outlined in Republic Act 7394 (Consumer Act) and Executive Order 913.

A 1995 Case Digest was furnished by BTRCP illustrating the expeditious and inexpensive mechanism made available to the Filipino buyer seeking redress of grievances. Mediation approach was emphasized, where the parties in a suit are brought to an amicable settlement without the necessity of going to Court. One case elucidated in the Case Digest narrated the complaint lodged by a certain consumer (Mr. X) on October 1993 involving a defective typewriter ribbon. Mr. X wrote a letter of complaint addressed to the manufacturer, but this was unanswered. As a result, Mr. X went to DTI-NCR for help. A mediation conference was held on February 5, 1994 and the manufacturer was compelled to attend. He apologized to Mr. X and replaced the ribbon with two good ones. The case was considered closed after just one meeting.

Another case cited in the DTI files concern a consumer who purchases a refrigerator from an appliance center. When he gets home he discovers that it does not function. The next day he returns to the store to speak to the manager. He is assured that store personnel will be sent over the following day to check on the refrigerator. The consumer cancels his entire appointments and stays home but the store representative does not show up. After three other follow-ups, the appliance store manager tells him that he should go instead to the manufacturer to complain. He does what he is told and after a service man inspects the refrigerator, he learns that its motor has a leak. He was promised a replacement after three weeks. Finally at his rope's end, he brings his case to the DTI who summons the manufacturer. By the scheduled mediation conference, only the consumer shows up. He tells his good news that in the meantime; his refrigerator has been replaced without him having to pay extra! Cases of the same tenor are recorded in DTI's Case Digest, which are reported as successful cases with happy endings. However, BTRCP discloses that there are

numerous cases filed and pending in their office subject to litigious proceedings. The majority of the cases instituted are Consumer Products and Service, and Product Quality and Safety under RA 7394 and such other cases falling under EO 913.

1.3 Handling Consumer Complaints

A joint DTI-DOH-DA Administrative Order No. I Series of 1993 outline the procedure for consumer complaints. It was specifically contrived to effectively implement the Consumer Act of the Philippines. In consumer complaints, the complainant must be a natural person and the subject of the complaint is a consumer product or service as defined under the Consumer Act. The concerned department may commence an investigation upon petition or upon letter complaint under oath from any consumer for violation of R.A. 7394, within their respective jurisdiction. The complaint should follow the form prescribed by law and filed in duplicate with the Provincial Office or Regional Office of the department having jurisdiction over the subject of the complaint. As soon as the complaint is instituted, the Arbitration Officer shall notify the parties to appear before him for purposes of mediating/ conciliating the controversy. The complaint must be filed within two years from the time the consumer transaction was consummated or the deceptive or unfair and unconscionable act or practice was committed and in the case of hidden defects, from discovery thereof. Rule II describes the Jurisdiction/ Powers and Duties of Consumer Arbitration Officers, who shall have original and exclusive jurisdiction to mediate, conciliate, hear and adjudicate all consumer complaints, provided however that this does not preclude the parties from pursuing the proper judicial action. Rule III detailed the Mediation/ Conciliation Process while Rule IV focused on the Arbitration Process. Appended herein is a flow chart illustrating these procedures. Depending on the ground cited by the consumer in his/her case, the methodology in resolving their disputes may differ (See Annex “A”).

As soon as a decision becomes final and executory, the Arbitration Officer shall, on motion of the interested party issue an Order of Execution and the Corresponding Writ of Execution deputizing and requiring the Philippine National Police, the National Bureau of Investigation or any other law enforcement or investigation agency of the government, or any public officer, in the enforcement of any of his decision or orders. Notwithstanding however the provisions of this Joint

Administrative Order, each concerned department may issue separate rules to govern the Arbitration of Consumer Complaint within their respective jurisdiction.

A CONSUMERNET was created in the Philippines to facilitate consumer transactions. It is comprised of the following agencies:

AGENCY INVOLVED	COVERAGE
Department of Trade and Industry	Manufactured products (milk, sugar, coffee, laundry soap, detergent bars, school supplies)
Department of Health - Bureau of Food and Drugs	Processed Food, Drugs, Cosmetics, Medical Devices/ Household products with hazardous substances
Department of Health	Hospital/ doctor's service
Department of Agriculture	Fish and fishery products (BFAR); Rice and corn (NFA); Sugar (SRA); Processed and unprocessed meat, dressed chicken (NMIC); and other agricultural products
Energy Regulations Board	Electric service
Department of Interior and Local Government	Food and restaurant, eateries, sidewalk and regulation of practice relative to weights and measure
Bangko Sentral ng Pilipinas	Banks, pawnshops
National Telecommunications	Telephone rates, cellular, TV & radio broadcast, complaints on paging, leased data (facsimile/ telex, telegram), coastal services (ship to shore, shore to ship)
Insurance Commission	Insurance claims (except health insurance)
Housing and Land Use Regulatory Board	Subdivisions and condominium
Bureau of Internal Revenue	Registration requirements, non-issuance/ fraudulent receipts, complaints regarding new modes of payment
Land Transportation Franchising Regulatory Board	Erring taxi drivers, tampered taxi meters, fare regulation
Metro Manila Development Authority	Traffic, solid waste management, public safety environment management, zoning, flood control
Department of Justice	Legal services to qualified indigents
Metropolitan Waterworks Sewerage System	Water and sewage related problems
Local Water Utilities Administration	Provincial urban water supply
Energy Regulations Board	Fuel/ petroleum products
Department of Environment and Natural Resources	Wildlife/ wildlife products, forest-based products

A consumer is advised to follow this procedure if there is a problem regarding the product that he/she bought:

- (i) *Identify the problem.* Identify the problem and what he/she believes would be a fair settlement. Is it return of his/her money or repair or even replacement of the product?

- (ii) *Gather documentation.* Gather documentation regarding the complaint -- sales receipts, repair orders, warranties, canceled checks, or contract which will support the complaint and help the company solve the problem. The provisions of the warranty should also be studied carefully.
- (iii) *Go back to where you made the purchase.* Contact the person who sold the item or performed the service. The consumer should as much as possible, calmly and accurately explain the problem. If that person is not helpful, the consumer should at that point ask to see the supervisor or manager and repeat the complaint. A large percentage of consumer problems are resolved at this level. Otherwise, he/she may go to the Consumer Welfare Desk of the business, or contact CONSUMERNET Members.
- (iv) *Write a formal letter.* If he/she is not satisfied with the remedies offered by the CWD, go to the consumer protection agency concerned and make the necessary complaint in accordance with the procedure prescribed by law.

2. Government and Private Initiatives

2.1 Institutions for Dispute Resolution

Government controls are the best protection for consumers. It is futile to think that businesses will introduce self-regulatory measures, which are adverse to their interests. Public regulation in consumer protection is significant because the courts are not a suitable vehicle for consumer protection measures.

R.A. 7394 established *The National Consumer Affairs Council* to improve the management, coordination and effectiveness of consumer programs. It is composed of representatives from the Department of Trade and Industry, the Department of Education, Culture and Sports, the Department of Health and the Department of Agriculture, four (4) representatives from consumer organizations nationwide to be chosen by the President from among the nominees submitted by the various consumer groups in the Philippines and two (2) representatives from business/ industry sector to be chosen by the President from among the nominees submitted by the various business organizations. Art. 153 enumerates the powers and functions of the Council:

- to rationalize and coordinate the functions of the agencies charged with consumer programs and enforcement of consumer related laws;
- to recommend new policies and legislation or amendments to existing ones;
- to monitor and evaluate implementation of consumer programs and projects and to take appropriate steps to comply with the established priorities, standards and guidelines;
- to seek the assistance of government instrumentalities in the form of augmenting the need for personnel facilities and other resources;
- to undertake a continuing education and information campaign to provide consumers with: (a) facts about consumer products and services; (b) consumer rights and the mechanism for redress available to him; (c) information on new concepts and developments on consumer protection; (d) general knowledge and awareness necessary for a critical and better judgment on consumption; and (e) such other matters of importance to the consumer's general well-being.

The Department of Trade and Industry through the Bureau of Trade Regulation and Consumer Protection was mandated by law (P.D. 721, E.Os 913, 133, 145, 242, 292 and 386) to act as the primary coordinative and regulatory arm of government for the country's trade, industry and investment activities. It is committed to develop an environment where there exists an "empowered and responsible consumer sector". It shall also formulate and monitor the implementation of programs for the effective enforcement of laws, correct interpretation and adoption of policies on monopolies and restraint of trade, mislabeling, product misrepresentation and other unfair trade practices; monitor the registration of business names and the licensing and accreditation of establishments and practitioners; protect and safeguard the interest of consumers and the public, particularly the health and safety implications of intrinsic product features, product representation and the like; and establish the basis for evaluating consumer complaints and product utility failures. In the pursuit of these goals, the bureau adopts a proactive approach in linking consumers, business and other government agencies, wherein a coordinated education and information program to ensure consumer welfare as the entity join the new world trade order is established,

sound policies and guidelines to effectively enforce fair trade laws and ensure its compliance are formulated, and a timely relevant and expedient support services in the field of consumer complaints, protection of intellectual property rights, business regulation and information is provided to clients.

To facilitate consumer complaints, BTRCP installed the Consumer Welfare Division. The object of the project is to encourage consumers to seek redress for their complaints directly with the concerned establishment, in cooperation with the Philippine Retailers Association (PRA), Philippine Association of Supermarkets Inc (PASI) and Philippine Amalgamated Super-markets Association (PAGASA). The division operates on the credo that a “Well-informed and Vigilant Consumer is the Best Protected Consumer.” Its functions are to:

- provide ample protection to the consuming public through a massive tri-media consumer education and information dissemination program;
- release information materials such as consumer alerts and consumer tips;
- promote consumer awareness on basic issues and concerns;
- provide mechanisms for the speedy resolution of consumer complaints;
- prepare guidelines in the development and strengthening of consumer organizations.

The other divisions of BTRCP towards this end are the Fair Trade Division and the Business Regulation Division. To facilitate the Consumer Protection Program of the Department, there were significant Administrative Orders released, which simplified the procedure in filing consumer complaints as regards venue and jurisdiction (Administrative Order. 004-97), appointed acting consumer arbitration officer for the hearing and adjudication of consumer complaints (Department Order 124-92) and set up a standard/ schedule for the imposition of fines for violators of the law (Administrative Order 007-99).

The Department of Agriculture (DA) through Administrative Order No. 9 outlined its course of action on Consumer Protection. Several attached Implementing Agencies were given jurisdiction by the Department over complaints on particular agricultural commodities. These implementing agencies as enumerated in Rule II Sec 2 are:

- National Food Authority: rice and corn
- Bureau of Animal Industry: animal by-products, animal effects, eggs, live animals and fowls, animal feeds, veterinary drugs and products
- Bureau of Plant Industry: fresh fruit in their natural state of form except coconut, fresh vegetables in their natural state or form, root crops and similar products in their natural state or form, legumes and other stored plant products, spices, seeds and nuts for planting, nursery stocks, medical plants, ornamental plants
- Bureau of Fisheries and Aquatic Resources: fish and fishery products
- Fertilizer and Pesticide Authority: fertilizers and pesticides
- Sugar Regulatory Administration: raw and refined sugar
- Philippine Coconut Authority: coconut-based consumer products
- National Meat Inspection Commission: processed and unprocessed meats, dressed chicken, processed hides and casings

Sec. 3 established additional powers, functions and duties of these implementing agencies to further the cause of Consumer Protection. These include:

- undertake researches, develop and establish quality and safety standards for agricultural products in coordination with other government and private agencies closely associated with these products;
- inspect and analyze agricultural products for purposes of determining conformity to established quality and safety standards;
- levy, assess, collect and retain fees as are necessary to cover the cost of inspection, certification, analysis and tests of samples of agricultural products and materials submitted in compliance with the provisions of the Act;
- investigate the cause of and maintain a record of product related deaths, illnesses and injuries for use in researches or studies on prevention of such product related deaths, illnesses and injuries;
- accredit independent, competent non-government bodies to assist in: (1) monitoring the market for the presence of hazardous or non-certified products and other forms of violations, and (2) other

appropriate means to expand the monitoring and enforcement outreach of the agencies in relation to its manpower, testing and certification resources at a given time;

- accredit independent, competent testing laboratories.

In Rule 3, a DA Technical Committee was specially created as the central body of the DA for overseeing and monitoring the implementation of the Consumer Act with respect to agricultural products as carried out by the concerned attached agencies including National Consumer Affairs Council (NCAC) and the Bureau of Food and Drugs (BFAD). Consumer Participation, Advisory Services and Consumer Program Reforms were likewise encouraged in the Implementing Rules and Regulations. It acknowledges the fact that cooperation and awareness are important implements in the success of the Consumer Protection Law.

Indeed, the main thrust of DA is on strengthening these attached agencies with specialized skills and knowledge to specifically answer the queries of consumers. Unfortunately, the difficulty with this system is that these agencies tend to work individually and independently, such that it is difficult to monitor the development of Consumer Complaints in each agency. When inquiring about the frequency and nature of the complaints DA handles, each agency has a list of its own which is not closely monitored and summarized considering the work load of each. This is probably the reason behind the creation of a separate DA Technical Committee in Rule 3.

The Department of Health through the Bureau of Food and Drugs (Legal Division) is mandated to provide legal advice in the enforcement of food and drug laws and regulation. It likewise conducts administrative proceedings and quasi-judicial hearings on cases related to food and drug laws and regulations and prepares recommendations, resolutions and other administrative issuances pertaining to regulation of processed foods, drugs and other related products. This office conducts investigation of consumer complaints on products regulated by the Bureau; and monitor product advertisements and promotions to check compliance with existing guidelines on medical and nutritional claims. BFAD has been very visible in its campaign on food, cosmetics and other drug products (Bureau Circular 3-95 and Bureau Circular 8A-99) and on labeling and advertisement of substances hazardous to health such as cigarettes (A.O. 10-93).

The Department of Education, Culture and Sports is directed to develop and adopt a consumer education program which shall be integrated into existing curricula of all public and private schools from primary to secondary level. A continuing consumer education program for out-of-school youth and adults shall likewise be developed and undertaken. The consumer education program shall include information regarding:

- The consumer as a responsible member of society and his responsibility to develop: (a) critical awareness which is the responsibility to be alert questioning about the use of and price and quality of goods he uses; (b) assertiveness which is the responsibility to act so he is assured of a fair deal, aware that for as long as he remains to be a passive consumer he will continue to be exploited; (c) social concern which is the responsibility to be aware of the impact of his consumption on other citizens; and (d) environmental awareness which is the responsibility to understand the environmental consequences of his consumption;”
- Consumer rights; and
- Practical problems the consumer faces in daily life.

2.2 Consumer Groups

Consumers can exercise a good deal of influence by banding together into pressure groups. They have a number of identifiable interests in common: economic efficiency, diversity of purchasing choice, avoidance of monopoly profits and consumer fraud, optimal purchasing information and good quality products and services in relation to price. Individual consumers could aggregate their complaints to more effectively pursue their interests like other pressure groups. Consumers should be educated about their rights and more support could be given to pressure “repeat players” like large manufacturers to incorporate consumer-friendly provisions in their contracts, such as a longer warranty period.

In the Philippines, safeguarding of consumer rights is essentially entrusted to the government. But there are local consumer groups linked to an international group with a membership of more than 260 organizations in almost 120 countries. *Consumers International* is an independent, non-profit organization which strives to promote a fair society through defending the rights of all the consumers, including

poor, marginalized and disadvantaged people by supporting and strengthening member organizations and the consumer movement in general, and campaigning at the international level for policies which respect consumer concerns. It was founded in 1960 as the International Organization of Consumer Unions (IOCU) by a group of national consumer organizations that acknowledged that they could build upon their individual strengths by working across national borders. Now the organization is acclaimed as the voice of the international consumer movement on issues such as product and food standards, health and patients' rights, the environment and sustainable consumption, and the regulation of international trade and public utilities. Consumers International successfully campaigned for the adoption by the United Nations of the 1985 Guidelines for Consumer Protection, which is still the single most important document about consumer protection, serving as a vital lobbying tool both nationally and internationally. Likewise, it strives to educate consumers through research and training, and the development of resource materials. Institution and capacity building is also a major concern, aiming to develop knowledge and skills in its member's organizations through training programs, seed grants, technical assistance, information networks, exchange programs and joint projects.

In the end, what the organization seeks is to promote and enhance the rights of the consumers and to infuse the responsibility corollary to the enjoyment of these rights. These rights are: the right to satisfaction of basic needs, the right to safety, the right to be informed, the right to choose, the right to be heard, the right to redress, the right to consumer education and the right to a healthy environment. Nonetheless, consumers have the responsibility to use their power in the market to drive out abuses, encourage ethical practices and support sustainable consumption and production. The development and protection of consumers' rights and awareness of their responsibilities are integral to the organization's ideals -- eradication of poverty, good governance, social justice and respect for human rights, fair and effective market economies, and protection of the environment.

The recognized members of this organization in the Philippines are: Citizens' Alliance for Consumer Protection (CACAP), Consumers Federated Groups of the Philippines Inc. (CFGF), Konsumo Dabaw, and Philippine Consumers Movement Inc (KMPI). These groups however have yet to make a significant effect in the Philippines, primarily because the concept of "consumer protection" has yet to be ingrained in the Filipino mentality.

2.3 Private Business Establishments

The Government encourages all the business establishments to create a Consumers Welfare Desk to assist consumers in their queries. Department stores need little reminding of this endeavor, considering that they value quality and customer satisfaction to thrive in business. In Rustan's, one of the largest up-scale department store chains in the Philippines, the Legal Office (Atty. Noli Rayos del Sol, Assistant General Counsel, was interviewed in August 2001) disclosed that they are aware of the RA 7394 policy that the "best interest of the consumer shall be considered in the interpretation and implementation" of the rules (this policy is adopted in departmental rules and regulations specifically, the Bureau Food and Industry A.O. No. 10-93 on labeling and advertisements of cigarettes, passed March 22, 1993). Hence, they make sure that the customers are given priority. A consumer dissatisfied with a certain product can go to the Customer Service and speak with the manager. The manager will try to assist the consumer and make the necessary apologies or refund or exchange if necessary. The managers are trained well to deal with the consumers because they give a human face to the otherwise impersonal business enterprise. Rustan's Grocery is at times confronted with complaints regarding adulterated canned and dairy products. Rustan's Department Store on the other hand encounters questions on product quality.

Most consumer complaints are resolved within the managerial level. Otherwise, it is elevated to the Legal Department and meetings with clients who are accompanied by their lawyers are held. On the average, it takes only three to four meetings before they reach an amicable settlement and the client eventually drops the case. In these meetings, the suppliers are ordered to appear to explain their side. If the suppliers are remiss in their duties, Rustan's sanctions them for a month or two by removing their products from the racks until they have secured the necessary changes. Only a few cases are raised to the Department of Health (BFAD) or the Department of Trade and Industry (BTRCP). In fact, Rustan's boasts of having less than 10 cases pending in these departments. The secret lies in what they call the *ligaw* system, which is the Pilipino word for "courting." This way they appease the complaining consumer and personally deliver goodies and tokens to placate them. They even shoulder medical expenses and visit the sick consumer in the hospital to directly check on the patient and assuage his worries. Management is convinced that this is the surest way by which the cases are discontinued and customer satisfaction is attained.

IV. Conclusion

The essence of ADR lies in a trellis of interests. There is the overwhelming hope for a peaceful settlement of disputes; a recognition of the inherent limits of conventional judicial structures in responding to new challenges; an enlivened emphasis on the active role the community plays in the lives of their members; the re-thinking of what it considers to be fair and reasonable; the wearing away of the over-dependence on professionals to solve our problems; and empowering the individual consumer with knowledge and decision-making skills.

There is no catalogue of essential ingredients necessary to build the ideal mechanism for consumer disputes. It is clear though that whatever this is, it should: (1) relieve the courts of congested dockets; (2) enhance community involvement in the dispute resolution process; (3) make the process accessible to the ordinary consumer by, *inter alia*, reducing improper cost and delay and (4) to provide more effective dispute resolution that would correct the gross power imbalance between the individual consumer and the institutional seller (Karl J. Mackie, A HANDBOOK OF DISPUTE RESOLUTION: ADR IN ACTION, 1991, p 2-3).

ADR consists of dispute resolution processes outside of or contiguous to the traditional judicial framework. It is used to overcome the infirmities in litigation where the usual remedy for breach of contract or tort is payment of damages. As such, it is primarily concerned with compensating individuals who have been harmed rather than with preventing a wrongdoing. Despite civil sanctions on commercial establishments, they can still profit by wrongdoing after paying damages to the few dissatisfied consumers. Damages, as deterrence is effective only if it is less expensive for a business to alter its behavior than to give relief to disgruntled consumers. Consequentially, there remains doubt as regards the competence of the courts to give judgment, with a view to upholding consumer rights. A legitimate concern is that the courts have neither the knowledge, time nor judicial manpower to investigate and evaluate evidence of a scientific or technical nature. Hence, should consider the viability of establishing a separate, specialized tribunal for considering consumer protection offenses. The establishment of a consumer tribunal is only the first step, however, and there needs to be an urgent reshaping of the community's perception of consumer law violations.

Notwithstanding the inherent weaknesses of the traditional court system, the power of courts to impose civil liabilities in the form of damages is still better than ADR where as a rule, the arbiters cannot grant damages. For instance, Art. 164 of the Consumer Act of the Philippines enumerate the administrative penalties that could be imposed by the Arbitration Officers. Among these is the issuance of a cease and desist order, the acceptance of voluntary assurance of compliance or discontinuance from the respondent that it will refrain from engaging in unlawful or unethical trade practices. Another sanction is reimbursement of any money or property in connection with the complaint or the duty to replace, recall or refund the defective products. The only administrative fines allowed should not be neither less than P500.00 nor more than P300, 000.00 “depending on the gravity of the offense.” The law does not speak of consequential or punitive damages. In the DTI cases earlier discussed, the cases were deemed close upon replacement of the product. No importance was given to the fact that the consumer had to miss his appointments or take time off from work. Neither was any pecuniary value given to the apprehension and inconvenience suffered by the customer who had to repeatedly follow-up his complaint and spend weeks without a refrigerator or typewriter.

Likewise, the Department of Trade and Industry Order No. 124-92 (Adopted October 28, 1992) provides that one of the administrative penalties the consumer arbitration officer may impose is “restitution or rescission of the contract without damages.” Another illustration is Rule VI of the Rules and Regulations implementing the Consumer Act, which applies to service quality imperfections. The remedies of consumers of service quality imperfections or improper service have the following alternative options: 1) proper performance of the service without additional cost to the consumer; 2) immediate reimbursement of the amount paid, with monetary updating, without prejudice to losses or damages; or 3) proportionate reduction of price. In contract law enforceable in courts, specific performance and money damages are not mutually exclusive remedies. Courts have the discretion to award both especially if the breach has already resulted in interim consequential damages.

Another drawback of ADR is the difficulty of enforcement. Enforcement agencies tend to rely on public outcry before it acts. As a result, objectionable behavior which adverse effects are not immediately felt by ordinary consumers may be overlooked. An individual who is discontented with a product could very well be ignored by the merchant. Until he organizes with other consumers to present

collective complaints, neither the company guilty of mass violations nor the enforcement agencies would feel compelled to act.

One immediate way in which enforcement agencies can be reinvigorated is by greater participation by consumers, and a more powerful government consumer council is one way of ensuring that the consumer voice is heard when government policies affecting consumers are made and implemented. In the Department of Agriculture A.O No. 9, which adopted the implementing rules and regulations of the Consumer Act, the National Consumers Affairs Council is proscribed to “establish procedures for meaningful participation by consumers or consumer organizations in the development and review of department rules, policies, and programs” (Rule VII, Sec. 16). Such procedures should include holding of forums where consumers can articulate their concerns and recommendations to decision-makers.

Moreover, there is always a danger that consumer advocacy bodies will take on the easy or controversial issues that will gain wide publicity and acclaim in mass media. Another related problem pertains to community perception that consumer rights transgressions are not as morally offensive or vicious as petty criminal malfeasance. Many Filipinos are fatalistic and would passively accept this simply as “bad luck” befalling them. Consumer groups and the enforcement agencies themselves have a role here in changing perceptions.

Even in the U.S., only very few dissatisfied consumers use any third-party complaint mechanism. Close to a third complain directly to sellers or more often, return goods for refunds. In slightly more than six percent of the cases, they simply changed brands or dealers in the future (*Id*, Singer at 89). Filipinos, who like other Asians are less confrontational than Westerners, would balk at entering a long-drawn legal process exacerbated by the existing serious power imbalance.

The other possible weaknesses of ADR, however, involve the time and energy, which is needed to establish and improve internal ADR processes that may deflect focus from the more urgent tasks of judicial reform. Specific drawbacks of private schemes relate to their limited jurisdiction, their dependence upon private company support and their degree of independence. The financial relationship could mean that the private redress mechanism’s independence is immediately suspected, especially if the business establishment and not the neutral party choose the arbiter. In contrast, the independence of courts from the contending parties is not a major issue.

In the end, an effective alternative system of dispute resolution must enjoy the confidence of both parties; be expeditious and accessible; involve minimum expense to the parties; be procedurally fair and achieve just results; be actually and visibly impartial and independent; and financially secure (Id, Mackie at 171). Central to these is the trustworthiness of the arbitration officers. Art. 161 of the Consumer Act specify only two qualifications of consumer arbitration officers. They must be a college graduate with three years experience in the field of consumer protection and must be of good moral character. We earlier identified one advantage of ADR as bringing back to the community a deeper involvement in the life of their members and reducing the monopoly of power and wisdom in the hands of lawyers and judges. This inheres in the various modes of alternative dispute settlement. Mediation is the use of an impartial third party who is an outsider to the dispute. Conciliation connotes the preliminary involvement of this disinterested third party while arbitration allows disputants to choose their arbiter. Hence, technical expertise is not as important as probity and integrity. However, this does not preclude the necessity for a group of trained and qualified voluntary arbiters who can be relied on for their objectivity.

There is also a need to reconcile in express and unambiguous terms the Consumers Act and the compulsory conciliation and mediation in the barangay level. Negotiation, mediation, arbitration and its hybrids should evolve into mainstream consumer dispute resolution. The existence of an alternative means of pursuing a complaint and resolving a controversy provides the consumer with an additional choice or in many cases, one real choice, especially where the preferred approach is presentation of documents without oral arguments.

One clear advantage that ADR has over the courts is its versatility. It is unhampered by strict procedural requirements and evidentiary rules. This relative flexibility provides the opportunity to find a program, which is genuinely suitable for the needs of the small consumers. ADR offers speed, simplicity and the opportunity for all the parties to play a major part in the resolution of the problem at manageable expense. The participants act as problem-solvers, whose goal is towards a just result reached amicably and efficiently. The problems attendant to litigation such as financial exigency, laborious procedure and adversarial relationship would be eradicated, if not, minimized when opting for this alternative.

ADR is a remarkable process, filled with benefits and promises. In the Philippines, this system is very feasible and convenient considering the success of the

Barangay System and the Reported Case Digests and Incidents of Consumer Complaints in the different departments of government. And with the inherent amiable and convivial disposition of Filipinos in coping with problems, a non-contentious ADR meeting could resolve our consumer problems prior to resorting to judicial action. As it is, the laws and methods employed in the government are geared towards the arduous and lengthy litigation process. Art. 162 of The Consumer Act gives the arbitration officers original and exclusive jurisdiction to mediate, conciliate, hear and adjudicate all consumer complaints but such will not preclude the parties from pursuing judicial action. In the Department of Trade and Industry, the filing of an administrative case proceeds independently of any civil or criminal action pending before the regular courts (DTI Administrative Order No. 004-97 [1997]). Furthermore, although termed mediation or arbitration, the process yields to the adjudicatory nature of dispute resolution; reflective of the quasi-judicial powers reposed in the departments of governments.

This paper, nonetheless, shows that the government and the private sector are making significant contributions to protect the interests of the consumers and strengthen the grievance machinery. The laws and the rules are crafted well to suit the needs of consumers. Implementation, unfortunately, has been the major problem. There are still a multitude of things to be done, but it is heartening to know that the foundation has been carefully laid out.

Government agencies have shown immense support for consumer protection. They have passed rules and regulations to assist consumers. But this is not enough. The onus of responsibility for consumer protection continues to rest upon the consumer himself. It is his duty to be judicious in his transactions and in ultimately choosing the appropriate grievance mechanism and remedy.

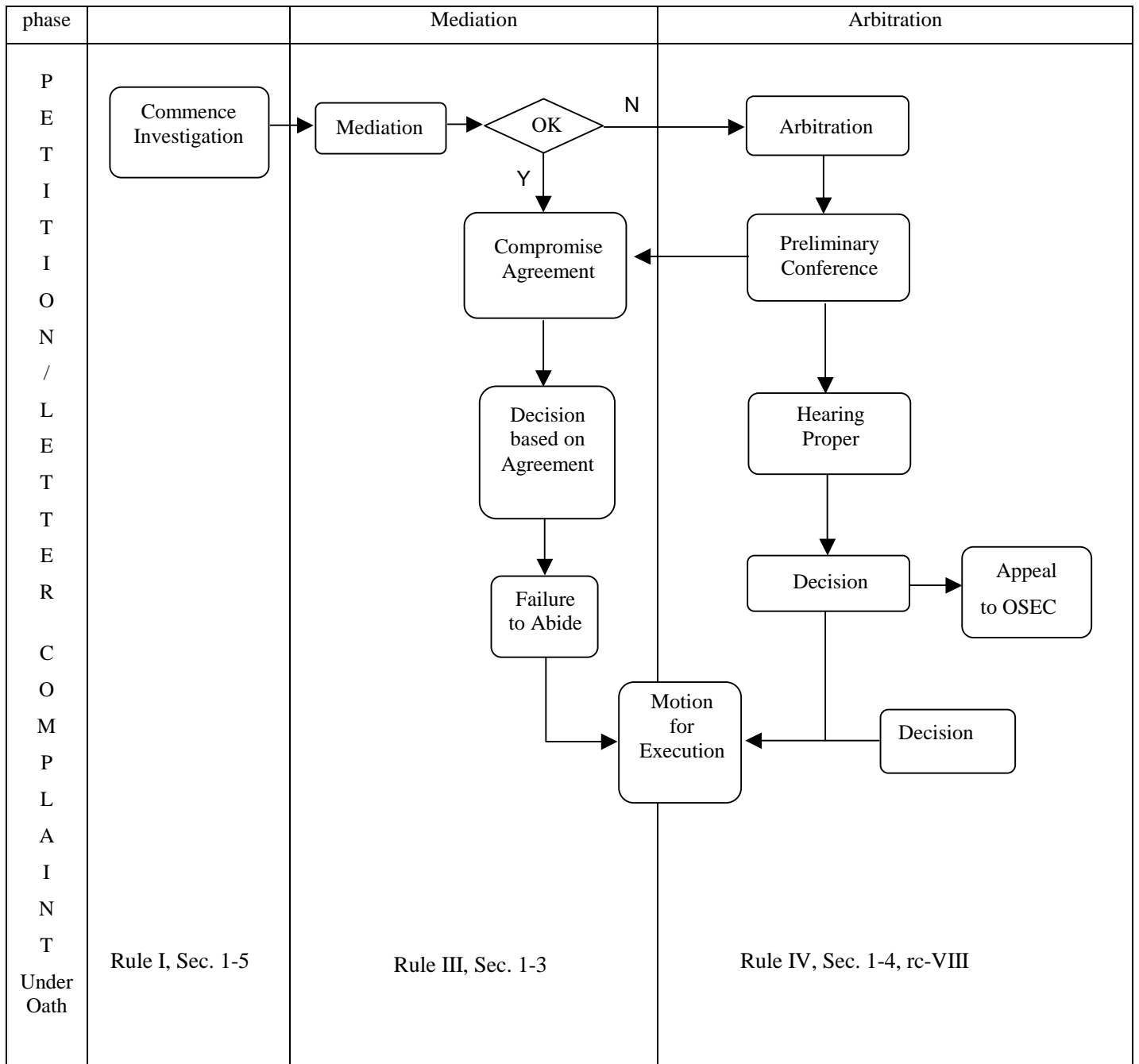
PROCESS FLOW CHART

Consumer Act

(R.A. 7394)

Joint Administrative Order #1, Series of 1993

Department of Trade and Industry



THE PHILIPPINES